



**UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, DC 20555 - 0001**

January 10, 2006

EGM 05-003

MEMORANDUM TO: Samuel J. Collins, Regional Administrator, Region I
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James L. Caldwell, Regional Administrator, Region III
Bruce S. Mallett, Regional Administrator, Region IV
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FROM: Michael R. Johnson, Director **/RA/**
Office of Enforcement

SUBJECT: ENFORCEMENT GUIDANCE MEMORANDUM - STATUTE OF
LIMITATIONS TRACKING GUIDANCE

The purpose of this memorandum is to provide clarification and guidance related to tracking potential escalated action cases that are approaching the statute of limitations deadline for which the staff is considering issuance of an Order or a civil penalty.

On June 14, 2005, in Supplemental Staff Requirements Memorandum (SRM) M050419A-SUPP, the Commission directed the staff to ensure that it had an effective system to track the statute of limitations deadlines and to develop an internal process for raising any violations identified by the tracking system to appropriate levels of management in a timely fashion. The staff provided its plan to the Commission in COMSECY-05-0033, dated August 5, 2005. The required steps identified by the staff and approved by the Commission in SRM COMSECY-05-0033 dated September 9, 2005, are captured in this enforcement guidance memorandum (EGM).

The timeliness of initiating enforcement action is important in helping to ensure the enforcement program is effective in achieving its objectives. In addition to the U.S. Nuclear Regulatory Commission's (NRC) fundamental interest in taking prompt action, 28 USC § 2462 establishes a

5-year statute of limitations that requires that the NRC initiate an action imposing a civil penalty, issuing an order to modify, suspend, or revoke a license or issuing an order to prohibit involvement in NRC licensed activity (enforcement sanction) within the 5-year statutory period. The statute is an affirmative defense that may be asserted by a person against whom a sanction is proposed and is intended to prevent the prosecution of stale claims. Thus, absent special circumstances, the NRC must initiate the action imposing a sanction no more than five years from the date of the violation. The statute does not prevent the staff from issuing a notice of violation (without civil penalty or other sanction) even if the underlying violation occurred more than five years earlier, or from issuing an order requiring an action needed to ensure compliance with existing requirements regarding public health and safety or common defense and security.

There are circumstances; however, in which NRC's action cannot be initiated promptly, for example, when a matter has been referred to the Department of Justice (DOJ) for consideration of criminal prosecution. As a general policy, if a matter has been referred to DOJ, unless immediate action is necessary for health and safety reasons, issuance of an enforcement action should be withheld to avoid potential compromise of the DOJ case, pending DOJ determination that the enforcement action may be issued. All enforcement cases involving referrals to DOJ should be coordinated with OE. Information regarding the Memorandum of Understanding between the NRC and DOJ can be found on the Enforcement Web site at <http://www.nrc.gov/what-we-do/regulatory/enforcement/moudoj.pdf>.

In cases where the five-year period is nearing an end but staff review of the case is not complete, there are two options to protect the NRC's authority to impose a sanction: (1) seek a waiver from the licensee or other person that the statute of limitations defense will not be asserted, or (2) issue the enforcement action before the statute of limitations date notwithstanding the pendency of the DOJ review (after appropriate consultation) or without conducting discretionary agency processes, for example, a predecisional enforcement conference. In the latter case, the action may be later modified, if warranted, after the staff completes its review. There are also cases in which the limitations period may be suspended (tolled), such as where the violation was fraudulently concealed or where the licensee failed to provide NRC with a required notification of the underlying violation. In those very infrequent instances where the five-year limitations period is nearing an end, consult with OGC and OE in order to seek a waiver, determine if the statute can be tolled, or prepare an action to initiate the enforcement action within the statutory period. The staff, however, should take all measures necessary to avoid placing itself in such a situation.

In order to ensure that the staff appropriately tracks the statute of limitations deadlines, and informs the Commission and NRC management of any violations approaching the statute of limitations for which the staff may impose a sanction, the following actions will be taken:

1. Provide the Commission, on a quarterly basis, preferably following the Office of Investigations' (OI) communication with DOJ regarding the status of any cases that are under review for prosecution, an enforcement action tracking system (EATS) database report used by the Office of Enforcement (OE) to track the statute of limitations for potential escalated enforcement actions.

- OE, in conjunction with the Office of Information Services, is in the process of developing a new, integrated database that will include a direct link to the statute of limitations data currently tracked by OI. The staff expects the new EATS to be developed and operational during the fourth quarter of FY 2006.
 - In the interim, the staff will provide the Commission a report detailing those OI investigations currently under DOJ review for greater than 60 days, and those potential escalated action cases within 12 months of the statute expiring.
2. The staff will request Commission approval prior to any agreement with DOJ for which the NRC will seek a waiver from the licensee or other person that the statute of limitations defense will not be asserted.
 3. Provide the Commission, no less than six months in advance of reaching the statute of limitations, the staff's proposed plan of action for those cases within one year of the statute expiring.

The Regional and Headquarters offices must provide (typically through the enforcement panel strategy forms) the date of the violation and may participate in the development of the proposed plan of action for any case that is within a year of the statute of limitations expiring. OE will track the potential escalated action cases, provide the quarterly reports to the Commission on a quarterly basis, and develop a plan of action for any potential escalated action cases that is within one year of the statute of limitations expiring.

This EGM will remain in effect until the Enforcement Manual is updated to reflect this information.

If you have any questions, contact Russell Arrighi at 301-415-0205 or by e-mail at rja1@nrc.gov.

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